



**7565-01-P**

**DEPARTMENT OF THE INTERIOR**

**National Indian Gaming Commission**

**25 CFR Parts 581, 584, and 585**

**RIN 3141-AA47**

**Appeal Proceedings before the Commission**

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Final rule.

**SUMMARY:** The National Indian Gaming Commission (NIGC or Commission) is revising its appeals regulations to include, amongst the appealable actions, the Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards.

**DATES:** The effective date of these regulations is [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Armando Acosta, National Indian Gaming Commission, 1441 L Street NW, Suite 9100, Washington, DC 20005. Email: [armando\\_acosta@nigc.gov](mailto:armando_acosta@nigc.gov); telephone: (202) 632-7003.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100-497, 25 U.S.C. 2701 et seq., was signed into law on October 17, 1988. The Act established the Commission and set out a comprehensive framework for the regulation of gaming on

Indian lands. The Act requires that the Commission, by regulation, provide an opportunity for an appeal and a hearing before the Commission on fines levied by the Chair against the tribal operator of an Indian game or a management contractor, and to determine whether a temporary closure order issued by the Chair should be made permanent or dissolved. 25 U.S.C. 2713(a)(2), 2713(b). By regulation, the Commission has also provided rights to tribes and/or management contractors to appeal ordinance disapprovals, management contract approvals or disapprovals, enforcement actions, and actions to void an approved management contract. The appellate procedures for these actions are all consolidated in this subchapter.

## **II. Previous Rulemaking Activity**

On September 21, 2012, the Commission published two final rules amending 25 CFR parts 543 and 547. In its final rule for part 543, the Commission provided tribal gaming regulatory authorities (TGRA) with rights to appeal the Chair's decisions to approve or object to a TGRA's adoption of alternate standards from those required by the Commission's minimum internal control standards contained in part 543 (77 FR 58708, Sept. 21, 2012). In its final rule for part 547, the Commission provided TGRAs with rights to appeal the Chair's decisions to approve or object to a TGRA's adoption of alternate standards from those required by the Commission's technical standards contained in part 547 (77 FR 58473, Sept. 21, 2012).

On September 25, 2012, the Commission published a final rule consolidating all appeal proceedings before the Commission into the current subchapter H (Appeal Proceedings Before the Commission). 77 FR 58941, Sept. 25, 2012. However, the new appeal rights provided under parts 543 and 547 were not included in subchapter H at that

time. On January 22, 2013, the Commission published a Notice of Proposed Rulemaking proposing to revise subchapter H to include the new appeal rights provided to TGRAs under parts 543 and 547 (78 FR 4366, Jan. 22, 2013).

### **III. Review of Public Comments**

In response to its Notice of Proposed Rulemaking published on January 22, 2013, the Commission received the following comments:

#### *General Comments Applicable to the Entire Subchapter*

*Comment:* One commenter applauded the revisions to the subchapter and stated that these long-term, permanent changes reflect the importance of tribal sovereignty rights and the true partnership between the federal government and tribal nations.

*Response:* The Commission agrees.

#### *584.2 Who may appeal? and 585.2 Who may appeal?*

*Comment:* One commenter was concerned that the proposed revisions limit appeals rights to TGRAs only. While the commenter recognizes that TGRAs are the parties most directly affected by the Chair's decisions to approve or object to a TGRA's adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards, the commenter suggests that the rule be revised to also permit tribal governments to bring appeals on behalf of TGRAs. The commenter provided multiple reasons for the suggested revision, including that some TGRAs lack independent litigation authority and thus may not be able to proceed with an appeal independent of the tribe; or that some TGRAs do not have the funding to proceed with an appeal without the financial assistance of the tribal government, and thus, for

accounting purposes, the appeal would have to be brought in the name of the tribe rather than the TGRA.

*Response:* The Commission declines to revise the rule as suggested by the commenter. While the Commission has taken into consideration the circumstances that some TGRAs may lack independent litigation authority and/or that some TGRAs do not have the funding to proceed with an appeal without the financial assistance of a tribal government, the Commission believes that such circumstances are internal tribal matters that must be resolved between the TGRAs and their tribal governments before the appeals reach the Commission. As noted by the commenter, the TGRAs are the parties most affected by the Chair's decisions to approve or object to the TGRAs' adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards. If an appeal is successful, only a TGRA can implement the alternate standards in a gaming facility. Therefore, the Commission believes that only the TGRAs should be allowed to bring an appeal.

## **Regulatory Matters**

### **Regulatory Flexibility Act**

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Moreover, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

### **Small Business Regulatory Enforcement Fairness Act**

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100

million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

#### Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

#### Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

#### Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

#### Paperwork Reduction Act

This proposed rule does not require information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq., and is therefore not subject to review by the Office of Management and Budget.

### **List of Subjects**

25 CFR Parts 581, 584, and 585

Appeals, Gambling, Indian-lands.

For the reasons set forth in the preamble, the Commission revises its regulations at 25 CFR chapter III, subchapter H, parts 581, 584, and 585, as follows:

### **Subchapter H—Appeal Proceedings before the Commission**

### **PART 581—MOTIONS IN APPEAL PROCEEDINGS BEFORE THE COMMISSION**

1. The authority citation for part 581 continues to read as follows:

**Authority:** 25 U.S.C. 2706, 2713, 2715.

2. In § 581.1, paragraph (a) introductory text is republished and paragraphs (a)(3) and (4) are revised to read as follows:

#### **§ 581.1 What is the scope of this part?**

(a) This part governs motion practice under:

\* \* \* \* \*

(3) Part 584 of this subchapter relating to appeals before a presiding official of notices of violation, orders of temporary closure, proposed civil fine assessments, the Chair's decisions to void or modify management contracts, the Commission's proposals to remove certificates of self-regulation, the Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required

by the Commission's minimum internal control standards and/or technical standards, and notices of late fees and late fee assessments; and

(4) Part 585 of this subchapter relating to appeals to the Commission on written submissions of notices of violation, orders of temporary closure, proposed civil fine assessments, the Chair's decisions to void or modify management contracts, the Commission's proposals to remove certificates of self-regulation, the Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards, and notices of late fees and late fee assessments.

\* \* \* \* \*

3. Revise § 581.4 to read as follows:

**§ 581.4 How do I file a motion before a presiding official?**

Motion practice before a presiding official on appeals of notices of violation, orders of temporary closure, proposed civil fine assessments, the Chair's decisions to void or modify management contracts, the Commission's proposals to remove certificates of self-regulation, the Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards, and notices of late fees and late fee assessments is governed by § 584.4 of this subchapter.

**PART 584—APPEALS BEFORE A PRESIDING OFFICIAL OF NOTICES OF VIOLATION, PROPOSED CIVIL FINE ASSESSMENTS, ORDERS OF TEMPORARY CLOSURE, THE CHAIR'S DECISIONS TO VOID OR MODIFY MANAGEMENT CONTRACTS, THE COMMISSION'S PROPOSALS TO**

**REMOVE A CERTIFICATE OF SELF-REGULATION, THE CHAIR'S  
DECISIONS TO APPROVE OR OBJECT TO THE ADOPTION OF  
ALTERNATE STANDARDS FROM THOSE REQUIRED BY THE  
COMMISSION'S MINIMUM INTERNAL CONTROL STANDARDS AND/OR  
TECHNICAL STANDARDS, AND NOTICES OF LATE FEES AND LATE FEE  
ASSESSMENTS**

4. The authority citation for part 584 continues to read as follows:

**Authority:** 25 U.S.C. 2706, 2710, 2711, 2712, 2713, 2715, 2717.

5. Revise the part heading to part 584 to read as set forth above.

6. In § 584.1, paragraph (a) introductory text is republished, paragraph (a)(6) is redesignated as paragraph (a)(8) and new paragraphs (a)(6) and (7) are added to read as follows:

**§ 584.1 What does this part cover?**

(a) This part applies to appeals of the following where the appellant elects a hearing before a presiding official:

\* \* \* \* \*

(6) The Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's minimum internal control standards under part 543 of this chapter;

(7) The Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's technical standards under part 547 of this chapter; and

\* \* \* \* \*



7. Amend § 584.2 by adding paragraph (c) to read as follows:

**§ 584.2 Who may appeal?**

\* \* \* \* \*

(c) Appeals of the Chair's decisions to approve or object to the adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards may only be brought by the tribal gaming regulatory authority that approved the alternate standards for the gaming operation(s).

8. Revise the section heading to § 584.3 to read as follows:

**§ 584.3 How do I appeal a notice of violation, proposed civil fine assessment, order of temporary closure, the Chair's decision to void or modify a management contract, the Commission's proposal to remove a certificate of self-regulation, the Chair's decision to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards, and a notice of late fees and late fee assessments?**

\* \* \* \* \*

**PART 585—APPEALS TO THE COMMISSION ON WRITTEN SUBMISSIONS OF NOTICES OF VIOLATION, PROPOSED CIVIL FINE ASSESSMENTS, ORDERS OF TEMPORARY CLOSURE, THE CHAIR'S DECISIONS TO VOID OR MODIFY MANAGEMENT CONTRACTS, THE COMMISSION'S PROPOSALS TO REMOVE A CERTIFICATE OF SELF-REGULATION, THE CHAIR'S DECISIONS TO APPROVE OR OBJECT TO THE ADOPTION OF ALTERNATE STANDARDS FROM THOSE REQUIRED BY THE**

**COMMISSION'S MINIMUM INTERNAL CONTROL STANDARDS AND/OR  
TECHNICAL STANDARDS, AND NOTICES OF LATE FEES AND LATE FEE  
ASSESSMENTS**

9. The authority citation for part 585 continues to read as follows:

**Authority:** 25 U.S.C. 2706, 2710, 2711, 2712, 2713, 2715, 2717.

10. Revise the part heading to part 585 to read as set forth above.

11. In § 585.1, paragraph (a) introductory text is republished, paragraph (a)(6) is redesignated as paragraph (a)(8), and new paragraphs (a)(6) and (7) are added to read as follows:

**§ 585.1 What does this part cover?**

(a) This part applies to appeals of the following where the appellant does not elect a hearing before a presiding official and instead elects to have the matter decided by the Commission solely on the basis of the written submissions:

\* \* \* \* \*

(6) The Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's minimum internal control standards under part 543 of this chapter;

(7) The Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's technical standards under part 547 of this chapter; and

\* \* \* \* \*

12. Amend § 585.2 by adding paragraph (c) to read as follows:

**§ 585.2 Who may appeal?**

\* \* \* \* \*

(c) Appeals of the Chair's decisions to approve or object to the adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards may only be brought by the tribal gaming regulatory authority that approved the alternate standards for the gaming operation(s).

13. Revise the section heading to § 585.3 to read as follows:

**§ 585.3 How do I appeal a notice of violation, proposed civil fine assessment, order of temporary closure, the Chair's decision to void or modify a management contract, the Commission's proposal to remove a certificate of self regulation, the Chair's decision to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards, and notices of late fees and late fee assessments?**

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DATED: April 4, 2013.

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**Tracie L. Stevens,**  
Chairwoman

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**Daniel J. Little,**  
Associate Commissioner

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